Filed 12/22/20 In re M.G. CA3

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re M. G., a Person Coming Under the Juvenile Court Law.	C090986
SACRAMENTO COUNTY DEPARTMENT OF CHILD, FAMILY AND ADULT SERVICES, Plaintiff and Respondent, v. A.W., Defendant and Appellant.	(Super. Ct. No. JD237702)

Appellant, mother of minor M., appeals from the orders of the juvenile court made at the permanency hearing terminating reunification services. (Welf. & Inst. Code,[1] §§ 366.21, 395.) She contends the juvenile court's finding that she received reasonable

[1] Undesignated statutory references are to the Welfare and Institutions Code.

reunification services is not supported by substantial evidence because she did not receive adequate visitation with M. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In light of the limited issue on appeal, we provide an abbreviated summary of the factual and procedural background.

On August 21, 2016, the Sacramento County Department of Child, Family and Adult Services (Department) received a referral alleging there was domestic violence between mother and father, in the presence of the minor M. (then age eight) and her siblings.[2] The incident appeared to be one of mutual combat between the parents. Law enforcement officers confirmed that there was an extensive history of responding to parents' home and the Department had discussed the effects of domestic violence on the children back in 2011, after an incident that had occurred in the minors' presence. Mother, however, had reported that she did not need services.

In October 2016, the Department received reports that father had come to mother's home on several occasions and broken a window. The social worker subsequently observed parents in a verbal altercation in the parking lot of the minors' school. M. was so stressed she was sucking her lip to the point of abrasion and her older sibling was defecating in his pants daily.

On November 9, 2016, the Department filed section 300 petitions on behalf of the minors. Before either parent was notified of the petitions, and after another instance of father harassing mother, father took his own life. Mother reported domestic violence in the relationship with father but that the impact of domestic violence was "not much" of a role in the minors' trauma. She maintained that the minors were not suffering serious emotional harm or damage as a result of the ongoing domestic violence, but that the

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[2] Mother's notice of appeal does not encompass orders relating to the minor's siblings.

minors' trauma was caused by the Department and that the Department had increased the trauma "by instigating it" with "constant" contact by social workers. Mother refused to meet with the social worker to develop a case plan and refused to get anyone else involved for the purposes of a support network or to even discuss her support system, and refused to provide any information about her participation in services.

On February 27, 2017, the juvenile court sustained the section 300 petitions. The Department assessed mother as resistant to recommendations for services but recommended the minors remain in the home with maintenance services and court supervision. On April 24, 2017, the Department received a referral alleging that mother had engaged in physical abuse, excessive discipline and force with M. On May 25, 2017, the juvenile court adjudged M. and her siblings dependent children of the court to remain in the care of mother under dependent supervision.

On May 14, 2018, after two new referrals alleging mother's physical abuse with excessive discipline and reports of M.'s substantial emotional distress, the Department filed a section 387 supplemental petition. The court issued a protective custody warrant and M. was ordered detained from mother's custody. An amended section 387 supplemental petition was filed on August 2, 2018, alleging that mother had used excessive physical discipline, "influenced" the minor and her siblings not to talk to the Department, and failed to care for M.'s mental health. On October 3, 2018, the juvenile court found placement with mother had been ineffective in protecting the minor and her siblings and sustained the section 387 petition. M. and her siblings were removed from mother's physical custody and the court ordered family reunification services.

Mother failed to reunify. Numerous witnesses testified at the lengthy section 366.21, subdivision (f) hearing, which took place in October and November of 2019. With respect to visitation with M., family service worker Shannon Bispham testified that she was assigned to visitation for the family for two to three months in the spring of 2018. During that time, M. had refused to visit on at least three occasions.

Arranging visitation with mother was a problem before the court adopted a specific visitation order, as mother refused to speak with Bispham in person, would not readily commit to visitation times, and required all communication via e-mail. A settlement agreement was made in April 2019, and it was agreed mother would have visits twice weekly for one-and-one-half hours.

Family social worker Lisa Swinney testified that she had been the assigned visitation worker for nearly a year. During that time, M. had missed visits for various reasons, including camps, and mother was offered make up visits. Swinney was not, however, permitted to communicate with mother directly about make up visits or to work out visitation details. Rather, mother required Swinney go through the assigned social worker and mother's counsel.

Permanency social worker Christina Boakye-Donkor testified that M. would refuse visits for various reasons and refused visits would not be made up. On one occasion, M. had refused to attend because, although the visits took place indoors at the library, it was too hot outside and she did not want to go. While M. was at the Children's Receiving Home in June 2019, M. refused three visits with mother and was late for visits on three occasions. M. also missed four visits while away for a camp. For the visits for which M. was late, the time was subsequently added to the time to be made up. Boakye-Donkor testified that, at the time of trial, mother and M. had nine visits that needed to be made up for various reasons, including the minor being sick, the social worker being sick, or a holiday that landed on a visit day.

Once M. was moved to her group home, she refused six visits with mother. Boakye-Donkor would have a conversation with M. about her refusals to visit when she met with her -- which she did at least once per month. On one occasion, M. had made up a story about being afraid of a man outside of the group home. On another occasion, M. had wanted to go to a water park instead of visit. Sometimes the minor would simply shrug her shoulders and provide no reason at all. In 2019, there were approximately 78

visits offered and M. attended 63 of those visits. M. had refused to visit on 15 occasions in 2019.

M. testified in chambers and outside the presence of mother. She testified she visited mother on Tuesdays and Fridays, but she wanted the days to change so she did not have to miss her basketball practice. Regarding those visits to which she had refused to go, she would refuse to visit if her older sibling was present. She had also refused visits which conflicted with basketball practice. She denied refusing to visit in order to attend any other activities or that she did not want to visit mother, generally.

Mother testified that M. was normally transported late to her twice-weekly visits. Mother also stated that M. missed more than half of her visits and that mother was not told in advance whether M. would be attending or why she was not attending. Mother acknowledged that she had not wanted to have overnight visits because she felt the end of the visit would cause M. to "relive" her removal.

The section 366.21, subdivision (f) hearing concluded in November 2019. The juvenile court found by clear and convincing evidence that reasonable services had been provided, found return of M. and her siblings would be detrimental and, noting the hearing date was 18 months from the date of removal, terminated reunification services.

DISCUSSION

Mother contends substantial evidence does not support the juvenile court's finding that reasonable services were provided because her visitation services were inadequate. Even if we address, as mother has, the adequacy of her visitation services in isolation, instead of combined with the reunification services she received as a whole, we disagree.

The finding that reasonable reunification services have been provided prior to setting a section 366.26 hearing, must be made upon clear and convincing evidence. (§ 366.21, subd. (g)(4); *Serena M. v. Superior Court* (2020) 52 Cal.App.5th 659, 674.) On appeal, we "must account for the clear and convincing standard of proof when addressing a claim that the evidence does not support a finding made under this standard.

When reviewing a finding that a fact has been proved by clear and convincing evidence, the question before [us] is whether the record as a whole contains substantial evidence from which a reasonable factfinder could have found it highly probable that the fact was true. In conducting [our] review, [we] must view the record in the light most favorable to the prevailing party below and give appropriate deference to how the trier of fact may have evaluated the credibility of witnesses, resolved conflicts in the evidence, and drawn reasonable inferences from the evidence." (*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1011-1012.)

The social worker must make "a good faith effort" to provide reasonable services responding to the unique needs of each family member. (*Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 810; accord, *In re Dino E*. (1992) 6 Cal.App.4th 1768, 1777.) "The adequacy of a reunification plan and of the department's efforts are judged according to the circumstances of each case." (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1362.) The question is not whether more or better services could have been provided, but "whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.)

During reunification efforts, visitation generally must be as frequent as possible, consistent with the well-being of the child. (§ 362.1, subd. (a)(1)(A).) At the same time, visitation orders must provide for "flexibility in response to the changing needs of the child and to dynamic family circumstances." (*In re S.H.* (2003) 111 Cal.App.4th 310, 317.) "In addition, the parents' interest in the care, custody and companionship of their children is not to be maintained at the child's expense; the child's input and refusal and the possible adverse consequences if a visit is forced against the child's will are factors to be considered in administering visitation." (*Ibid*.)

Here, the evidenced showed that mother was provided a significant amount of visitation with M. Arranged by settlement agreement, she received twice-weekly visits, with each visit scheduled for an hour and one-half. While M. did refuse to visit on

occasion, for reasons such as wanting to attend basketball practice, M. attended 63 visits (out of 78 scheduled visits) in 2019. Visits that were missed for reasons other than the minor's refusal to visit were scheduled for make up visits. And when M. was late to a visit, the time was made up during one of those make up visits. At the time of the hearing, there were nine make up visits that needed to be completed. Unfortunately, mother would not permit the visitation worker to communicate with her directly about make up visits or to work out visitation details and, instead, required the visitation worker to work through the assigned social worker and mother's counsel in making those arrangements.

Contrary to mother's suggestion, the Department did not improperly permit M. to veto visits altogether. In fact, M. reported that visits were "fine," and she generally attended the visits. She primarily visited on her own accord and not because she was pressured to do so. She was, however, sometimes "encouraged" or "pressured" to attend visits when she wanted to skip them, and she sometimes complied. Having attended 63 visits in 2019, that the 10- to 11-year-old minor was not forced to attend a few particular visits, against her will, does not render the visitation inadequate.

Finally, we reject mother's contention that she was not provided reasonable services because she "was not told of the reason or reasons her daughter was not attending the visits" which "prevented [m]other from addressing any such reasons which may have been caused by [m]other's conduct (if any were) and foreclosed the possibility that [m]other's and M.[]'s relationship could be improved." The evidence does not support the premise that M. was declining visits as a result of mother's conduct.

Because we conclude substantial evidence supports the juvenile court's finding by clear and convincing evidence that reasonable reunification services were provided, we do not reach the issue of the remedy for having received inadequate services.

DISPOSITION

The orders of the juvenile court are affirmed.

/s/
Robie, J.

We concur:

/s/
Hull, Acting P. J.

/s/
Renner, J.